IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2011

CORAM

The Hon'ble Mr.Justice M.M.Sundresh

W.P.Nos.13257, 13356, 12723, 13365 & 12785 of 2003
and
W.P.M.P.Nos.16646, 16647 of 2003
in
W.P.Nos.13257 of 2003

1)M/s. Classic Mines & Minerals,
rep. By its Managing Partner,
R.R.Sekaran,
No.5/268-B, R.R.Plaza,
Meyyanur, Salem 636 004. ... Petitioner in W.P.Nos.13257
& 13365of 2003

2.M/s.Sri Venkateswara Minerals,
rep. by its Partner,
Mr.Y.N.Dwarakanathan,
No.65 Town Railway Station Road,
Salem 636 001. ... Petitioner in W.P.No.13356 of 2003

3.M/s.Dwaraka Mines & Minerals,
rep. by its Managing Partner,
Mr.D.Satesh Kumar,
No.56, Town Railway Station Road,
Salem 636 001. ... Petitioner in W.P.No.12723 of 2003

4. M.Irusa Gounder ... Petitioner in W.P.No.12785 of 2003

Vs.

1.The Commissioner of Geology and Mining,
Guindy, Chennai 600 032.
... 1st Respondent in W.P.Nos.13257
12723, 13365 and 12785 of 2003

2.The State of Tamil Nadu,
rep by its Secretary to Government,
Industries Department,
Fort St.George,
Chennai 600 009. ... 1st Respondent in W.P.No.13356 of 2003

2.The District Collector,

Salem District, Salem.

3.The Assistant Director of Geology and Mining,
Salem 7 ... 2nd and 3rd Respondents
in all the W.Ps.

Prayer in W.P.No.13257 of 2003:

Writ Petition filed under Article 226 of the Constitutionof India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent herein in his proceedings in Roc.No.1347/2001/Mines B dated 7.4.2003 and to quash the same and to direct the respondents herein to permit the petitioner to carry on quarrying operations in respect of the petitioner's own patta lands situated in Survey Nos.211/IB2; 211/2A2; 212/4B; 220/1; 220/2; 220/6 and 224/1-A over an extent of 2.18.0 Hectares in Virudasampatty Village, Mettur Taluk, Salem District on payment of royalty amount, as per the Central Government Gazette India Notification No.469 dated 12.09.2000.

Prayer in W.P.No.13356 of 2003:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent herein in his proceedings in Roc.No.1347/2001/Mines B dated 7.4.2003 and to quash the same and to direct the respondents herein to permit the petitioner to carry on quarrying operations in respect of the petitioner's own patta lands situated in Survey Nos.273 (Part) over an extent of 33.58 acres 68/1 (Part) 8.29 acres and 68/3 1.54 acres (Total 43.41 acres) in Pakkanadu and Avadathur Villages Mettur Taluk, Salem District on payment of royalty amount, as per the Central Government Gazette India Notification No.469 dated 12.09.2000.

Prayer in W.P.No.12723 of 2003:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent herein in his proceedings in Roc.No.1347/2001/Mines B dated 7.4.2003 and to quash the same and to direct the respondents herein to permit the petitioner to carry on quarrying operations in respect of the petitioner's own patta lands situated Survey No.69/1-A 0.34.0 Hectares; 69/1-B-0.53.0 Hectares; 69/1-C 0.24.5 Hectares ; 69/1D-0.24.0 Hectares; 69/1E 0.35.5 Hectares and 69/1F-0.16.0 Hectares in Avadathur Villages Mettur Taluk, Salem District on payment of royalty amount, as per the Central Government Gazette India Notification No.469 dated 12.09.2000.

Prayer in W.P.No.13365 of 2003:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent herein in his proceedings in Roc.No.1347/2001/Mines B dated 7.4.2003 and to quash the same and to direct the respondents herein to permit the petitioner to carry on quarrying operations in respect of the petitioner's own patta lands situated in Survey Nos.220/3,4,5 A-1 over an extent of 2.44.0 Hectares in Virudasampatty Village Mettur Taluk, Salem District on payment of royalty amount, as per the Central Government Gazette India Notification No.469 dated 12.09.2000.

Prayer in W.P.No.12785 of 2003:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent herein in his proceedings in Roc.No.1347/2001/Mines B dated 7.4.2003 and to quash the same and to direct the respondents herein to permit the petitioner to carry on quarrying operations in respect of the petitioner's own patta lands situated in Survey No.30/4 over an extent of 0.98.5 Hectares in Chitoor Bit-II Village Edappadi Taluk, Salem District on payment of royalty amount, as per the Central Government Gazette India Notification No.469 dated 12.09.2000.

For Petitioners : Mr.K.R.Krishnan
For Respondents : Mr.P.Subramanian
Addl. Govt. Pleader

COMMON O R D E R

In view of the common issue involved in all the Writ Petitions, they have been taken up together and disposed off, by this common order.

2. For the sake of brevity, the facts involved in W.P.No.13257 of 2003, have been taken for deciding the issues raised in the present Writ Petitions.

3. The petitioners herein have been granted mining lease for quartz and feldspar and they have been paying royalty at the rate of Rs.17/- per metric tonne. Later on, the Government of India, by a notification dated 11.04.1997, made in G.S.R.No.214 (E), has modified the flat rate of feldspar at 10% of sale price on ad volerem basis, instead of flat rate of Rs.17/- per metric tonne. A clarification was sought for, from the Commissioner of Geology and Mining, by a letter dated 25.6.2001, on the ground that the quality of feldspar available in the District of Salem was very poor and as a result, the sale price was also very low, which would mean that the rate of royalty also would become less than Rs.17/-. Accordingly, the lessees included in the Writ Petitions were allowed to pay Rs.17/- per tonne, as per the old rate.

4. During an audit inspection, the Accountant General by proceedings dated 05.10.2000, as pointed out that the Government of India, has revised the rate of royalty for all the minerals in the notification dated 12.09.2000. Therefore, an objection has been raised, stating that the rate of royalty applicable to the material feldspar, as per the said notification is Rs.45/- per metric tone, instead of Rs.17/- , actually paid by the petitioners.

5. Based upon the audit objection, a clarification has been sought for, from the respondent No.1. It was replied by the respondent No.1, in and by letter dated 25.02.2003, that inasmuch as the Government of India, has not made any distinction between low grade and high grade, with regard to the levy of royalty for feldspar, such a classification is not permissible, as it goes beyond scope of Act and Rules.

6. Accordingly, it was informed by the respondent No.1, that objection made by the Accountant General has to be sustained and the rate of royalty payable by the petitioners will have to be revised from Rs.17 per metric tonne to Rs.45/-. Based upon the said clarification, the orders impugned have been passed by the respondent No.3, directing the petitioners to pay the arrears of royalty at the revised rate of Rs.45/-per metric tonne, as from the earlier one paid at Rs.17/- per metric tonne. Challenging the said orders, passed by the respondent No.3, these Writ Petitions have been filed.

7. Mr.K.R.Krishnan, the learned counsel appearing for the petitioners submitted that there is no basis for fixing the royalty at Rs.45/-per metric tonne. Even as per the computation of royalty, fixed by the Indian Bureau of Mines, the amount payable would be Rs.25.50 per tonne. When there is no dispute about the poor quality, available in the Salem District, an uniform fixation of royalty cannot be sustained.

8. Admittedly, the orders impugned have been passed without affording an opportunity to the petitioners. It has been passed, merely based upon the objection raised by the Accountant General in his audit report. If only the petitioners were given sufficient opportunity, they would have been in a position to put forth their case. Hence, the learned counsel submitted that the Writ Petition will have to be allowed.

9. Per contra, Mr.P.Subramanian, the learned Additional Government Pleader, based upon a counter affidavit filed, as well as circular dated 09.12.2003, submitted that the demand has been made, taking into consideration of the valuation fixed by the Indian Bureau of Mines , as well as the amendment of 64 (D) of Minerals Concession Rules, 1960. Inasmuch as the said Rules do not provide for classification between good and bad quality of minerals, an uniform demand at the rate of Rs.45/- towards royalty, has been fixed. The petitioners have been paying royalty at the rate of Rs.45/- per metric tonne from 01.04.2003 onwards. Therefore, the Additional Government Pleader, submitted that the Writ Petition will have to be dismissed.

10. Admittedly, the orders impugned have been passed without affording an opportunity to the petitioners. By the impugned orders, the earlier fixation of Rs.17/-per metric tonne was sought to be revised, without affording opportunity to the petitioners. Therefore, such an unilateral decision arrived at by the respondent No.3 , cannot be sustained in the eye of law, inasmuch as the impugned orders involve civil consequences, resulting in payment to be made by the petitioners. The question as to whether the petitioners are liable to pay royalty at the rate of Rs.45/-per metric tonne or at some other rate, has to be decided by the respondent No.3. However, such decision will have to be made, only after considering the objections of the petitioners.

11. It is further to be seen that in the impugned orders, it has been stated that the same has been passed, based upon the audit report on the communication of the respondent No.1. The petitioners did not know the basis upon which the audit report was given, as well as the communication of the respondent No.1, sent to the third respondent.

12. Therefore, without going into the merits of the case, while setting aside the orders impugned herein, the respondent No.3, is directed to show cause as to why the demand made in the impugned orders shall not be made on the petitioners. The third respondent is further directed to enclose a copy of the proceedings dated 25.02.2003, sent by the respondent No.1 as well as the the copy of the audit report to the petitioners, along with the show cause notice. Thereafter, the respondent No.3 shall pass final orders, after considering the objections of the petitioners. The respondent No.3, shall complete the said exercise, within a period of three months from the date of receipt of a copy of this order.

13. It is made clear that if the petitioners did not give any reply to the show cause notice sent to them, it is open to the respondent No.3, to pass orders, based upon the available materials. It is further made clear that the orders passed by this Court is confined only to the recovery of amount, mentioned in the impugned orders alone and they do not have a bearing on the subsequent payments made by the petitioners from 01.04.2003 onwards.

14. In the result, the Writ Petitions are ordered accordingly. However, there shall be no order as to costs. Consequently, connected W.P.M.P. Is closed.

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To

1. The Commissioner of Geology and Mining,
Guindy, Chennai 600 032.
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2.The State of Tamil Nadu,
rep by its Secretary to Government,
Industries Department,
Fort St.George,
Chennai 600 009.

3.The District Collector,
Salem District, Salem.

4. The Assistant Director of Geology and Mining,
Salem 7